

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21

KAISER PERMANENTE BERNARD J.
TYSON SCHOOL OF MEDICINE, INC.

And

Case 21-CA-273372

(b) (6), (b) (7)(C), AN INDIVIDUAL,

ANSWER

Respondent Kaiser Permanente Bernard J. Tyson School of Medicine, Inc. (“KPSOM”), by its undersigned attorney, for its Answer to the Complaint and Notice of Hearing (“Complaint”) filed by the General Counsel of the National Labor Relations Board (“NLRB”), states as follows:

GENERAL DENIAL

Except as otherwise expressly stated herein, KPSOM denies each and every allegation contained in the Complaint, including, without limitation, any allegations contained in the preamble or headings of the Complaint, and KPSOM specifically denies that it violated the NLRA in any of the manners alleged in the Complaint or in any other manner. Averments in the Complaint to which no responsive pleading is required shall be deemed denied. KPSOM expressly reserves the right to seek to amend and/or supplement its Answer as may be necessary.

DEFENSES

Without assuming any burden of proof, persuasion, or production not otherwise legally assigned to it as to any element of the claims alleged in the Complaint, KPSOM asserts the following defenses.

1. This matter should be deferred pending the outcome of the civil action pending in the California Superior Court, Case No. (b) (6), (b) (7)(C).

2. The Complaint and each purported claim for relief stated therein fail to allege facts sufficient to state a claim upon which relief may be granted.

3. The statements referred to in Paragraphs 5(a) of the Complaint are protected statements under Section 8(c) of the NLRA and under the First Amendment to the United States Constitution and are not admissible to show any violation of the NLRA.

4. KPSOM's decision to place (b) (6), (b) (7)(C) on administrative leave was based on legitimate, non-retaliatory reasons.

5. KPSOM's decision not to renew (b) (6), (b) (7)(C) faculty appointment was based on legitimate, non-retaliatory reasons.

6. KPSOM has not violated Section 8(a)(1) of the NLRA as it has not interfered with, restrained, or coerced employees in the exercise of their rights protected by the NLRA.

7. (b) (6), (b) (7)(C) public posts on Twitter are not entitled to protection under the NLRA because the posts were part of a disparaging attack upon KPSOM.

8. (b) (6), (b) (7)(C) is not entitled to protection under the NLRA, and the General Counsel lacks jurisdiction to prosecute this Complaint, because (b) (6), (b) (7)(C) was not an employee of KPSOM.

9. The remedy requested in the Complaint is impermissibly punitive and would cause an undue hardship on KPSOM and its employees.

10. The remedy requested in the Complaint is improper because KPSOM has not violated Section 8(a)(1) of the NLRA.

11. The remedy requested in the Complaint is impermissibly retroactive because its legal basis represents a radical and not reasonably anticipated departure from current Board and court precedent.

12. Any finding of liability on the causes of action asserted in the Complaint would violate the Due Process Clauses of the Fourteenth Amendment to the United States Constitution, because the standards of liability under these statutes are unduly vague and subjective, and permit retroactive, random, arbitrary, duplicative, and inconsistent regulation and punishment that serves no legitimate governmental interest.

13. Some or all of the claims asserted in the Complaint are barred by the six month statute of limitations set forth in Section 10(b) of the NLRA.

RESPONSE TO SPECIFIC ALLEGATIONS OF THE COMPLAINT

AND NOW, incorporating the foregoing, KPSOM states as follows in response to the specific allegations of the Complaint:

Respondent denies the allegations contained in the preamble, except to admit that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) has charged in case 21-CA-273372 that Respondent has engaged in certain unfair labor practices prohibited by the NLRA, and that the General Counsel of the NLRB has issued this Complaint and Notice of Hearing based on (b) (6), (b) (7)(C) charge.

1. (a) KPSOM lacks information and knowledge sufficient to form a belief as to the allegations of Paragraph 1(a), except to admit that, on or around March 3, 2021, it received by

regular mail a charge, designated as Case No. 21-CA-273372. Except as expressly admitted, Respondent denies the allegations set forth in this paragraph.

(b) KPSOM lacks information and knowledge sufficient to form a belief as to the allegations of Paragraph 1(b), except to admit that, on or around April 22, 2021, it received by regular mail an amended charge, designated as Case No. 21-CA-273372. Except as expressly admitted, Respondent denies the allegations set forth in this paragraph.

2. (a) KPSOM admits that it is a subsidiary of Kaiser Foundation Hospitals and that it is a California nonprofit corporation with offices and a place of business located in Pasadena, California and that it is engaged in the business of providing medical education. Although KPSOM believes strongly in advancing diversity and promoting healthy communities, it denies that it is “engaged in the business” of either of those activities. Except as expressly admitted, Respondent denies the allegations set forth in this paragraph.

(b) KPSOM denies the allegations of Paragraph 2(b), except to admit that KPSOM students receive most clinical training from physicians affiliated with some Permanente Medical Groups.

(c) KPSOM admits the allegations of Paragraph 2(c).

(d) KPSOM admits the allegations of Paragraph 2(d).

3. Paragraph 3 states legal conclusions for which no response is required. To the extent Paragraph 3 contains factual allegations requiring a response, KPSOM denies those allegations, except to admit that it has been an employer of persons other than (b) (6), (b) (7)(C) and that it has been engaged in commerce. Except as expressly admitted, Respondent denies the allegations set forth in this paragraph.

4. (a) KPSOM admits that, at all times material to the allegations in the Complaint,

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C), that these

(b) (6), (b) (7) individuals were agents of KPSOM within the meaning of Section 2(13) of the Act, and that these (b) (6), (b) (7) individuals were supervisors within the meaning of Section 2(11) of the Act, except that KPSOM denies that any of the (b) (6), (b) (7) individuals are agents and supervisors of KPSOM with respect to each and every decision made by KPSOM. Except as expressly admitted, Respondent denies the allegations set forth in this paragraph.

(b) KPSOM denies the allegations of Paragraph 4(b), except to admit that (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

5. (a) KPSOM admits the allegations in Paragraph 5(a), except that KPSOM denies that the shooting occurred “near the medical school.”

(b) KPSOM denies the allegations in Paragraph 5(b), except to admit that (b) (6), (b) (7)(C) sent an email in which the words “Legacies of power structures and institutionalized racism that result in gender bias and race bias in medicine” appeared.

(c) Paragraph 5(c) states legal conclusions for which no response is required. To the extent Paragraph 5(c) contains factual allegations requiring a response, KPSOM denies those allegations, which are vague, ambiguous, overbroad, and devoid of any context.

(d) Paragraph 5(d) states legal conclusions for which no response is required. To the extent Paragraph 5(d) contains factual allegations requiring a response, KPSOM denies those allegations.

(e) KPSOM denies the allegations of Paragraph 5(e), except to admit that (b) (6), (b) (7)(C) discussed, among other things, issues pertaining to race with (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) 2020 and also made statements and engaged in conduct unrelated to race.

(f) Paragraph 5(f) states legal conclusions for which no response is required. To the extent Paragraph 5(f) contains factual allegations requiring a response, KPSOM denies those allegations.

(g) KPSOM denies the allegations of Paragraph 5(g), except to admit that KPSOM placed (b) (6), (b) (7)(C) on administrative leave on or about (b) (6), (b) (7)(C) 2020 and that during the administrative leave (b) (6), (b) (7)(C) was paid by (b) (6), (b) (7)(C) employer, the Southern California Permanente Medical Group. Except as expressly admitted, Respondent denies the allegations set forth in this paragraph.

6. (a) Paragraph 6(a) states legal conclusions for which no response is required. To the extent Paragraph 6(a) contains factual allegations requiring a response, KPSOM denies those allegations, except to admit that (b) (6), (b) (7)(C) posted publicly on (b) (6), (b) (7)(C) Twitter account on (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) 2020.

(b) Paragraph 6(b) states legal conclusions for which no response is required. To the extent Paragraph 6(b) contains factual allegations requiring a response, KPSOM denies those allegations, except to admit that (b) (6), (b) (7)(C) posted publicly on (b) (6), (b) (7)(C) Twitter account on (b) (6), (b) (7)(C) 2020.

(c) Paragraph 6(c) states legal conclusions for which no response is required. To the extent Paragraph 6(c) contains factual allegations requiring a response, KPSOM denies those allegations.

(d) KPSOM denies the allegations contained in Paragraph 6(d), except that it admits that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) faculty appointment expired on or about (b) (6), (b) (7)(C) 2021. Except as expressly admitted, Respondent denies the allegations set forth in this paragraph.

7. Paragraph 7 states legal conclusions for which no response is required. To the extent Paragraph 7 contains factual allegations requiring a response, KPSOM denies those allegations.

8. Paragraph 8 states legal conclusions for which no response is required. To the extent Paragraph 8 contains factual allegations requiring a response, KPSOM denies those allegations.

9. Paragraph 9 states legal conclusions for which no response is required. To the extent Paragraph 9 contains factual allegations requiring a response, KPSOM denies those allegations.

The unnumbered prayer for relief does not allege facts for which an answer is required, but relates the remedy sought by the General Counsel and, accordingly, no response is required. However, to the extent that a response may be deemed to be necessary, KPSOM denies that the General Counsel is entitled to, or that the Board can order, or that Respondent is entitled to, the remedies requested.

KPSOM reserves the right to raise any additional defenses not asserted herein of which it may become aware through investigation, as may be appropriate at a later time.

Dated: June 30, 2022

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott A. Kruse". To the right of the signature are three small black rectangular redaction marks.

SCOTT A. KRUSE
GIBSON, DUNN & CRUTCHER LLP
333 S. Grand Avenue
Los Angeles, CA 90071-3197
skruse@gibsondunn.com
Telephone: 213.229.7970
Facsimile: 213.229.6970

*Counsel for Kaiser Permanente Bernard J.
Tyson School of Medicine, Inc.*

CERTIFICATE OF SERVICE

I certify that a copy of Respondent's Answer was electronically served on June 30, 2022,
and sent by courier to the following parties:

William B. Cowen
Regional Director
National Labor Relations Board, Region 21
US Court House, Spring Street
312 N. Spring Street, 10th Floor
Los Angeles, CA 90012

Nathan M. Smith
Brown Neri Smith & Khan LLP
11601 Wilshire Blvd., Suite 2080
Los Angeles, CA 90025
Email: nate@bnsklaw.com

Counsel for (b) (6), (b) (7)(C)

A handwritten signature in black ink, appearing to read "Scott A. Kruse", followed by a black rectangular redaction mark.

SCOTT A. KRUSE
GIBSON, DUNN & CRUTCHER LLP
333 S. Grand Avenue
Los Angeles, CA 90071-3197
skruse@gibsondunn.com
Telephone: 213.229.7970
Facsimile: 213.229.6970

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**ORDER APPROVING WITHDRAWAL REQUEST, DISMISSING
COMPLAINT AND WITHDRAWING NOTICE OF HEARING**

The undersigned Regional Director of the National Labor Relations Board, Region 21, issued a Complaint and Notice of Hearing in Case 21-CA-273372 on June 16, 2022. Thereafter, on January 3, 2023, the Charging Party requested withdrawal of the charge pursuant to a non-Board settlement agreement. Having duly considered the request for withdrawal,

IT IS ORDERED that the request to withdraw the charge is approved, and

IT IS FURTHER ORDERED that the Complaint is dismissed. and the
Notice of Hearing is withdrawn.

Dated: January 4, 2023



William B. Cowen, Regional Director
National Labor Relations Board, Region 21
US Court House
312 N Spring Street, 10th Floor
Los Angeles, CA 90012